IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

CRP.No. 1920 of 2003(A)

AGAINST THE ORDER DATED 25/07/2003 IN EP 423/2001 IN OS.1054/1993 of PRINCIPAL SUB COURT,ERNAKULAM
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REVN. PETITIONER: 1ST & 2ND JUDGMENT DEBTORS /DEFENDANS 1 AND 2:
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1. **V.M.VEERANKUTTY, S/O. V.V.MOOSA, PUTHENPURACKAL, NETTOOR P.O.MARADU VILLAGE, RESIDING AT WARD NO.VI OF PANAVALLY PANCHAYATH PANAVALLY VILLAGE, CHERTHALA.**

2. **K.M.ABDUL KARIM S/O. M.A.MOHAMMED KATTUTHANIPARAMBU, NETTOOR.**

BY ADV. SRI.P.K.YUSUFF ISSUDDIN

RESPONDENT:DECREE HOLDER:PLAINTIFF:

THE FEDERAL BANK LTD., REGISTERED OFFICE AT ALUVA AND BRANCH OFFICE AT MADAVANA, PANANGAD BRANCH, REPRESENTED BY ITS MANAGER, PANANGAD BRANCH.

BY ADV. SRI.H.B.SHENOY
SMT.LAKSHMI B.SHENOY
SRI.ABU MATHEW
SRI.ANIL KURIAN THOMAS
SRI.SOBHAN GEORGE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No. 1920 OF 2003 A

Dated this the 10th August, 2007.

O R D E R

This revision petition is preferred by respondents 1 and 2 in E.P.423/01 in O.S.1054/93. By the impugned order the court directed issuance of warrant against the respondents 1 and 2. The court below found that evidence has been adduced to the effect that the first judgment debtor is having an income of Rs.2,000/- per month from a hotel at Cherthala and the other is a retired preventive officer owning a land of 14.5 cents. It has to be stated that there is absolutely nothing stated in the order about the means of the judgment debtor except the interested assertion of the Manager regarding the same. Just because a person is a retired preventive officer one cannot jump to the conclusion that he is having sufficient means to discharge the decree debt. When it is contended that the first judgment debtor is not having any employment in the hotel it is for the decree holder to prove that factor. The mere owning of a house also would not ipso facto prove the means but it is always possible for the decree holder to proceed against the property for the realisation of the amount. So, a reading of the order of the court below would reveal that there has been no positive evidence to

prove the income of these persons especially when they have rebutted the evidence tendered by P.W.1 as D.Ws. 1 and 2. Therefore, the order of arrest by the court below suffers from infirmity and it is set aside. Therefore the C.R.P is allowed. It is made clear that if there is property left with judgment debtors 1 and 2 the decree holder is free to proceed against that property in accordance with the law and procedure laid down in the Civil Procedure Code.

M.N.KRISHNAN
Judge

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